

Winter 2012

# Shoreland Zoning Newsletter Winter 2012

Maine Department of Environmental Protection

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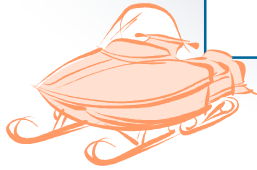
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# Shoreland Zoning Newsletter

Maine Department of Environmental Protection



Volume 25, Issue 3

## New Shoreland Zoning Staff Member

**T**he Shoreland Zoning Program has welcomed a new Shoreland Zoning Coordinator.

Colin Clark joins the team after eight years working in the Department of Environmental Protection's Field Services and Enforcement Unit for the Central Maine Region. This means he's very familiar with a great number of the municipalities in that region.

Colin received his B.S. in Environmental Management and

Policy from the University of Maine at Orono. As coordinator, Colin is responsible for overseeing program-wide tasks, such as drafting the next Chapter 1000 Rules. (More about this project is featured on page 2.)

Colin is very eager to offer shoreland zoning assistance to central Maine municipalities, which were previously served by




Colin enjoying the catch

### Inside this issue:

New Shoreland Zoning Staff Member 1

Earthmoving, Timber, Resource Protection 1

Notes from Shoreland Zoning Program 2

Deirdre Schneider, who is now Director of Special Projects in the Department of Environmental Protection Policy Development and Implementation Unit. 

## Earthmoving, Timber Harvesting, Resource Protection

**DEP Certified Contractors** will be required, starting January 1. In addition to the enclosed memo, the Fall 2012 Shoreland Zoning Newsletter contains more information:


[www.maine.gov/dep/land/newsletter/slz/fall2012.pdf](http://www.maine.gov/dep/land/newsletter/slz/fall2012.pdf).

**Timber Harvesting** choices take effect on January 1. Please refer to the enclosed memo for more information.

January 1: Contractor certification required and timber harvesting choices take effect.

### Resource Protection

Already in effect, the Guidelines were amended this past May, creating new flexibility with regard to protecting significant wildlife habitat. The enclosed memo details what this means for municipalities.

The enclosed memo contains contact information, in addition to page 4, if you have more questions about these topics. 

## Notes from the Shoreland Zoning Program

### Chapter 1000 (Guidelines):

It's that time again. Every four or so years, Chapter 1000 is revised, as required by law. This round of revisions is expected to be comprehensive. Hopefully the new Chapter 1000 will be clearer with more flexibilities, but it is not expected to be any more stringent than the current Guidelines.

Proposed Shoreland Zoning Act amendments have been drafted, and staff is beginning to draft the new Chapter 1000.

After drafted sections are reviewed internally, we hope to post them online. Comments and suggestions relating to Chapter 1000 are always welcome by emailing [colin.clark@maine.gov](mailto:colin.clark@maine.gov).

### Permit-By-Rule Change:

The cost of a permit-by-rule under the Natural Resources Protection Act has increased from \$65 to \$70. Increases are evaluated annually and are based on the Consumer Price Index. This change is effective as of November 1, 2012.



COMMUNICATION

### Trainings Upcoming:

Timber Harvesting Standards:  
Dec. 12, Scarborough  
Dec. 13, Augusta

[www.maine.gov/doc/mfs/mfs/events.shtml](http://www.maine.gov/doc/mfs/mfs/events.shtml)

Continued Education for  
Certified Contractors:

Dec. 13, Augusta

Dec. 18, Portland


[www.maine.gov/dep/training/npstrc-schedule.html](http://www.maine.gov/dep/training/npstrc-schedule.html)

Climate Change Adaptation  
Jan. 15-17, Wells Reserve

[wellsreserve.org/ctp](http://wellsreserve.org/ctp)

State CEO Certification

[www.maine.gov/spo/ceo/training](http://www.maine.gov/spo/ceo/training)

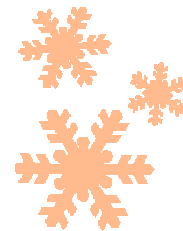
This program and website is now administered by the Department of Economic and Community Development. 



Maine Department of Environmental Protection

Newsletters are Online:

[www.maine.gov/dep/land/newsletter/](http://www.maine.gov/dep/land/newsletter/)



Shoreland Zoning staff contact information:

Colin Clark, Coordinator 207-441-7419

Eric Hitchcock, Northern Maine 207-764-0477

Stephenie MacLagan, Eastern Maine 207-356-1643

Mike Morse, Southern Maine 207-822-6328

Since 1987, the Shoreland Zoning Newsletter has been helping municipal officials better administer and enforce shoreland zoning ordinances.

Your feedback is always welcome. Feel free to submit comments, and topics for articles, to Stephenie MacLagan at [stephenie.maclagan@maine.gov](mailto:stephenie.maclagan@maine.gov)



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

PAUL R. LEPAGE  
GOVERNOR

PATRICIA W. AHO  
COMMISSIONER

MEMORANDUM

To: All Organized Municipalities

From: Maine Department of Environmental Protection, Shoreland Zoning Unit

Re: Shoreland Zoning Rulemaking effective May 5, 2012; Timber Harvesting in the Shoreland Zone; Certified Contractor Requirements; and the Natural Resources Protection Act

Date: December 7, 2012

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**Rulemaking:**

The Maine Department of Environmental Protection is writing to notify you that rulemaking took effect on May 5, 2012 for amendments to the Chapter 1000, *State of Maine Guidelines for Municipal Shoreland Zoning Ordinances* (Guidelines). The Guidelines serve as the “model shoreland zoning ordinance” for municipalities and establish minimum shoreland zoning requirements statewide.

The amended Guidelines remove the requirement to regulate Resource Protection District zoning around wetlands that contain waterfowl and wading bird habitat. The amendments were done in part due to overlapping jurisdiction of these habitat areas with a separate law, the Natural Resources Protection Act, which will continue to offer some level of protection for these resources. Additionally, these amendments afford landowners much greater flexibility in the use of their land.

Municipalities may choose to remove Resource Protection District zoning adjacent to these wetland habitat areas provided that there is no other condition that would otherwise require a Resource Protection District to remain in such locations (e.g. areas of 2 or more acres of steep slopes or wetland within the shoreland zone, floodplain of rivers and coastal wetlands, and areas of severe bank erosion). Please note that these wetlands must still be shoreland zone protected with a 250-foot shoreland zone. This amendment simply allows the zoning district to be something other than Resource Protection- most commonly a Limited Residential District. Please ensure any local amendments are consistent with approved comprehensive plans.

Conversely, a municipality may continue to regulate these areas with a Resource Protection District. The State is not mandating that municipalities amend their local shoreland zoning ordinance and map to be consistent with this recent rule change. However, should your

AUGUSTA  
17 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0017  
(207) 287-7688 FAX: (207) 287-7826  
RAY BLDG., HOSPITAL ST.

BANGOR  
106 HOGAN ROAD, SUITE 6  
BANGOR, MAINE 04401  
(207) 941-4570 FAX: (207) 941-4584

PORTLAND  
312 CANCO ROAD  
PORTLAND, MAINE 04103  
(207) 822-6300 FAX: (207) 822-6303

PRESQUE ISLE  
1235 CENTRAL DRIVE, SKYWAY PARK  
PRESQUE ISLE, MAINE 04679-2094  
(207) 764-0477 FAX: (207) 760-3143

municipality amend its ordinance and/or map, please remember to forward the required attested copy of the amendments to the department for our review and approval.

### **Timber Harvesting:**

For those municipalities that chose either Option 1, the repeal of timber harvesting, or Option 2, the adoption of the statewide timber harvesting standards, this change in the administration and enforcement of timber harvesting in the shoreland zone will become effective on January 1, 2013.

In addition, statutory changes during the last legislative session created additional flexibility regarding timber harvesting. For those municipalities that have either chosen Option 3 or have not made any choice regarding timber harvesting, but have retained the DEP-generated standards, a request can be made to the Division of Forestry, to assist in the administration and enforcement of these standards. Requests need to be submitted to the Director, Division of Forestry, Department of Agriculture, Conservation and Forestry, 22 State House Station, Augusta, Maine 04333-0022. These requests will be reviewed on a case by case basis. Pursuing this option may also require ordinance amendments to reflect the role of the Division of Forestry in the administration of the timber harvesting standards.

### **Certified Contractors:**

Starting January 1, 2013, any excavation contractor that engages in an activity that disturbs, or displaces more than one cubic yard of soil within the shoreland zone must ensure that a person certified by the DEP in erosion and sedimentation control practices is on-site.

The certified contractor must be on-site each day earthmoving activities occur and for a sufficient duration to ensure the proper implementation of erosion and sedimentation control practices. This is required until the site is permanently stabilized.

38 M.R.S.A. § 439-B, defines an excavation contractor as either:

- an individual or firm engaged in a business that causes the disturbance of soil, including grading, filling and removal, or
- in a business in which the disturbance of soil results from an activity that the individual or firm is retained to perform.

This neither applies to municipal employees working on municipal projects nor to homeowners doing the work themselves.

Enforcement of this provision will ultimately occur at the municipal level; however, this requirement is not in the current version of the Guidelines. The department is working on standard language to include in any future amendments to the Guidelines. If you are interested in adding a provision to your ordinance that deals with this subject matter, please contact shoreland zoning staff for assistance. In the meantime, the department suggests adding this requirement to the permit application itself. A simple box in which the applicant can provide the contractor's certification number would be sufficient to assist in ensuring compliance with this new

requirement. In addition, the department's website contains a searchable database of certified contractors. You can access this information at [www.maine.gov/dep/land/training/cccec.html](http://www.maine.gov/dep/land/training/cccec.html).

Again, please contact the department with any questions you may have about the administration and enforcement of this new requirement. For information on contractor certification courses, you can contact Bill Laflamme via email at [william.n.laflamme@maine.gov](mailto:william.n.laflamme@maine.gov) or at (207) 215-9237, or visit the department's website at [www.maine.gov/dep/training/npstrc-schedule.html](http://www.maine.gov/dep/training/npstrc-schedule.html).

### **Natural Resources Protection Act:**

In addition to the shoreland changes, amendments to the Natural Resources Protection Act have also occurred. These changes do not require any action on behalf of the municipality. This update has simply been included for informational purposes only.

Section 20 of Chapter 305 Permit by Rule (PBR) standards has been amended to allow new activities in upland areas on previously undeveloped lots in moderate value inland waterfowl and wading bird habitat. These amendments took effect on June 8, 2012.

To qualify for the PBR process, any new activity must be located at least 150 feet back from the upland edge or forested wetland edge of the inland wetland complex within the waterfowl and wading bird habitat (IWWH). No more than 20 percent of the applicant's land within the habitat may be cleared or developed as a result of the activity. Also, if the new activity takes place between April 15 and July 31, the Department of Inland Fisheries and Wildlife must approve the timing of the activity.

It is important to note that this new allowed activity under PBR applies only in moderate, not high value, IWWH. Moderate value IWWH has been color-coded differently than high value habitats. To find a particular habitat area, go to [www.maine.gov/dep/gis/datamaps/](http://www.maine.gov/dep/gis/datamaps/), scroll down to the **Bureau of Land and Water Quality - NRPA Bird Habitats - Inland Wading Waterfowl** and click on the Google Earth symbol.

Furthermore, Section 20 has allowed, and continues to allow for up to a 10 percent expansion for an existing development area when located in, on or over a wetland area rated as moderate or high value waterfowl and wading bird habitat, or shorebird nesting, feeding, and staging areas.

Developed area under this PBR section is defined as "the area of property altered including, but not limited to, buildings, driveways, parking areas, wastewater disposal systems, lawns and other landscaped areas, as of June 8, 2006."

For all projects not meeting these PBR standards an individual Natural Resources Protection Act permit will be needed. As a reminder the Natural Resources Protection Act and the shoreland zoning requirements are separate laws. Approval under one does not guarantee approval under the other. Compliance under both sets of standards is required for all projects.

As always, the Department's shoreland zoning staff is available to answer any questions you may have. Thank you.

cc: Regional Planning Agencies

Colin Clark, DEP, Shoreland Zoning Coordinator, Central Maine Regional Office

Eric Hitchcock, DEP, Northern Maine Regional Office

Stephenie MacLagan, DEP, Eastern Maine Regional Office

Mike Morse, DEP, Southern Maine Regional Office